IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 6707 of 2005(W)

OS.10/1971 of SUB COURT, OTTAPPALAM
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PETITIONER:

K.M.KRISHNAN NAMBOODIRI, AGED 59 YEARS,
S/O. PURUSHOTHAMAN NAMBOODIRI, KUMARAMPURAKKAL
CHERUKUDANGAD AMSOM, PALLIPPURAM DESOM,
OTTAPPALAM TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

RESPONDENTS:
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1. DAMODARAN NAMBOODIRI,
S/O. KUMARAMPULAKKAL DECEASED NARAYANAN NAMBOODIRI
CHERUKUDANGAD AMSOM, PALLIPPURAM DESOM,
OTTAPPALAM TALUK.

2. PURUSHOTHAMAN NAMBOODIRI
RESIDING AT CHERUKUNDANGAD AMSOM,
PALLIPPURAM DESOM IN OTTAPALAM TALUK.

3. SAVITHRI ANTHERJANAM,
RESIDING AT DO. DO.

4. VASUDEVAN NAMBOODIRI,RESIDING AT DO. DO.

5. THANKAM @ SREEDEVI, RESIDING AT DO. DO.

6. NARAYANA NAMBOODIRI, RESIDING AT DO.DO.

7. LEELA ANTHERJANAM
W/O. DECEASED NARAYANAN NAMBOODIRI,
RESIDING AT DO. DO.

8. NANGAYYA ANTHERJANAM,
W/O. KIZHAKKEDATH MANAKKAL SIVARAMAN,
ANAKKARA AMSOM, DO.

9. SREEDEVI @ AKAYIL THAMPURAN,
W/O. VENGATTAMANAKKAL VASUDEVAN NAMBOODIRI,
KOTHACHIRA AMSOM AND DESOM OF DO.

10. SAVITHRI ANTHERJANAM,
W/O. PANAMBATTA MANAKKAL KRISHNAN NAMBOODIRI,
PULASSERY AMSOM, MANNENKODE DESOM IN
OTTAPPALAM TALUK.

11. PARAMEL MANAKKAL VALIYA
RAMAN NAMBOODIRI, RESIDING AT KADAVALLOOR
VILLAGE AND DESOM IN THALAPPILLY TALUK.

12. RUDRAN @ RAVI NAMBOODIRI,
S/O. PARAMEL MANAKKAL VALIYA RAMAN NAMBOODIRI
RESIDING AT DO. DO.

13. P.M.SAVITHRI D/O. DO. RESIDING AT DO.

14. KRISHNAN NAMBOODIRI,S/O. DO.
RESIDING AT DO. DO.

15. P.M.VASUDEVAN NAMBOODIRI
S/O. DO. RESIDING AT DO.

16. RAMAN NAMBOODIRI,
S/O. PARAMEL MANAKKAL VALIYA RAMAN NAMBOODIRI
RESIDING AT KADAVALLOOR VILLAGE AND DESOM IN
THALAPPILLY TALUK.

17. RAMAN, MINOR BY GUARDIAN PARAMEL
MANAKKAL VALIYA RAMAN NAMBOODIRI (R11)
RESIDING AT -DO.

18. P.R.RAMANARAYANA PRASAD,
S/O. LATE GANGADEVI ANTHERJANAM,
RESIDING AT THRIKKARIYOOR AMSOM AND DESOM
IN KOTTAYAM DISTRICT.

19. UMADEVI @ BINDU D/O. DO. RESIDING AT -DO-

20. UMADEVI ANTHERJANAM
D/O. SIVARAMAN NAMBOODIRI, KIZHAKKINIYEDATH
MANAKKAL, ANAKKARA AMSOM, PERAMBALAM DESOM
IN OTTAPPALAM TALUK.

21. K.G.NAIR, ADVOCATE OTTAPPALAM
RECEIVER IN OS.NO.10/1971 SUB COURT, OTTAPPALAM.

BY ADV. SRI.T.C.MOHANDAS -- R7
SRI.T.M.SUNIL
SMT.K.V.BHADRA KUMARI -- R1
SRI.N.NILAKANDAN NAMBOODIRI -- R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 6707/2005 W

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE SHARE LIST PREPARED BY THE COMMISSIONER GIVING THE DETAILS OF ALLOTMENT MADE TO THE SHARERS.

EXT.P2. COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER DT.29/1/2005 FILED IN OS NO. 10/71 SUB COURT, OTTAPALAM.

EXT.P3. COPY OF THE OBJECTION BY THE PETITIONER TO EXT.P2 DT. 09/02/2005.

EXT.P4. COPY OF THE REPORT FOR DIRECTION SUBMITTED BY ADVOCATE COMMISSIONER IN IA NO. 752/91 IN OS NO. 10/1971 DT. 14/2/2005 OF THE SUB COURT, OTTAPALAM.

True copy

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PIUS C. KURIAKOSE, J.

W.P.(C) NO. 6707 of 2005

Dated this the 5th day of July , 2007

JUDGMENT

The persuasive and strenuous submissions of Sri.T.Sethumadhavan, the learned counsel for the petitioner notwithstanding, I am unable to agree with him when he submits that Ext.P4 order of the Sub Judge is vitiated to the extent of justifying interference by this court under the visitorial jurisdiction. Under Ext.P4 the court has directed the public auction in respect of a lake after finding that a physical division of the lake is not practically possible since it is a very extensive one. According to the court, a public auction will be beneficial to the sharers. During the course of the submissions, I enquired of the learned counsel Mr.Sethumadhavan whether the petitioner will be prepared to offer at least Rs.10 Lakhs as a price for the lack in question. After consulting the petitioner, he answered in the negative. The learned counsel for the petitioner would submit that the receiver had fixed market value for garden lands situated near to the town at around Rs.2,000/- per cent only and

therefore the market value of the lake cannot be as high as I suggested. Inviting my attention to Ext.P1 share list, the learned counsel would submit that the petitioner belongs to the group of major shareholders and under Ext.P1 his group entitled for Rs.1,24,390/-. The court below should be directed to allot the property worth that much from out of the lake in question to the petitioner.

2. Sri.T.C.Mohandas the learned counsel for the 7th respondent and Smt.Bhadrakumari, the learned counsel for the 1st respondent would resist the submissions of Sri.Sethumadhavan. Sri.Mohandas would submit that 14th respondent is an Antherjanam who is now constrained to take shelter in an Ashram and that the petitioner is clinging on to the entire property appropriating the entire income for himself.

3. As already indicated, the question for decision in this writ petition under Article 227 is whether Ext.P4 order can be said to be one justifying invocation of the supervisory jurisdiction, I am not able to say that Ext.P4 is a perverse order or an order which violates law. It cannot also be said that Ext.P4 will result in failure of justice or gross injustice. There is no warrant for

interference with Ext.P4. At the same time submissions of Mr.Sethumadahvan that I.A. No. 292/2005 filed by the petitioner is not being considered by the learned judge is to be taken note of. There is a similar submission from Sri.Mohandas and Smt.BhadraKumari that disposal of final decree application itself is getting delayed indefinitely to the detriment of their clients.

Having regard to those submissions, even as I approve Ext.P4 and dispose of the writ petition without granting the relief sought for. I direct the learned sub judge to take up I.A.292/2005, hear all the concerned parties and take an early decision on the same at the earliest and at any rate within one month of receiving a copy of this judgment. Similarly, I direct the learned judge to take up final decree application at the earliest and at any rate within six weeks of finalization of the auction which is presently ordered under Ext.P4 and dispose of that application also.

PIUS C. KURIAKOSE,
JUDGE.

dpk

dpk